

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

- - -

IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

MDL NO. 2311

/

PRELIMINARY SETTLEMENT APPROVAL

BEFORE THE HONORABLE MARIANNE O. BATTANI  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Thursday, April 9, 2015

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1 Detroit, Michigan

2 Thursday, April 9, 2015

3 At about 1:30 p.m.

4

— — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: Please rise.

7 The United States District Court for the Eastern

8 District of Michigan is now in session, the Honorable

9 Marianne O. Battani presiding.

10 You may be seated.

11 The Court calls Case No. 12-md-02311, Automotive

12 Parts Antitrust Litigation.

13 THE COURT: Good afternoon.

14 ATTORNEYS: (Collectively) Good afternoon, Your

15 Honor.

16 THE COURT: More of you than I expected. Hello, we

17 have people on the phone?

18 MS. COLE: Hello.

19 THE COURT: Hi, this is Judge Battani. We are just

20 about ready to begin. Can you hear me?

21 MS. COLE: Yes, I can hear you.

22 MR. DUKE: Yes.

23 THE COURT: Let's start with appearances while you

24 are speaking, is it Ms. Cole on the phone?

25 MS. COLE: Yes, Ms. Cole for the Panasonic

1 defendants from Winston & Strawn.

2 THE COURT: All right. And Mr. Duke?

3 MR. DUKE: Yes, also Brandon Duke.

4 THE COURT: You had a little bit of bad weather  
5 today, is that what happened?

6 MS. COLE: Unfortunately we are stuck. I'm stuck  
7 in O'Hare Airport due to weather delays, so I thank you very  
8 much for accommodating us telephonically.

9 THE COURT: I'm very sorry. We have good  
10 weather --

11 MS. COLE: Nothing like spending the day in O'Hare.

12 THE COURT: We have good weather in the courtroom  
13 but not so good outside.

14 All right. Let's start with the attorneys who are  
15 here so we can get everybody's appearances on the record  
16 starting with plaintiffs. You're on the wrong side, you  
17 always do this to me. Go ahead.

18 MR. FINK: Your Honor, David Fink, liaison counsel,  
19 appearing on behalf of the direct plaintiffs.

20 MR. KOHN: Joseph Kohn, Your Honor, for the direct  
21 plaintiffs.

22 MR. SPECTOR: Eugene Spector for the direct  
23 plaintiffs.

24 MR. HANSEL: Greg Hansel for the direct plaintiffs,  
25 Your Honor.

1 MR. FINK: And, Your Honor, Steve Kanner can meet  
2 with Mr. Duke, I believe he's also at O'Hare.

3 THE COURT: He's at O'Hare too?

4 MR. FINK: Yeah, I think he's in O'Hare also, yes.

5 THE COURT: Do you want to make an announcement,  
6 maybe we could get him on the phone?

7 MR. DUKE: I'm not actually in O'Hare, sorry.

8 THE COURT: See, the truth comes out.

9 MR. WILLIAMS: Good afternoon, Your Honor.  
10 Steve Williams for the end-payor plaintiffs.

11 MR. MANTESE: Your Honor, Gerard Mantese for the  
12 auto dealers.

13 MR. SCHNATZ: Your Honor, Adam Schnatz on behalf of  
14 the end payors.

15 THE COURT: Okay. I have a Louis Goldfarb listed  
16 here.

17 MR. GOLDFARB: Yes, Your Honor, for the direct  
18 purchasers.

19 THE COURT: Direct purchasers. All right. We go  
20 over to the defense.

21 MS. SWANSON: Joanne Swanson, local counsel for the  
22 Panasonic defendants.

23 MR. IWREY: Your Honor, Howard Iwrey on behalf of  
24 the TRW defendants.

25 MR. SEEBALD: Craig Seebald of Vinson & Elkins on



1       behalf of the Hitachi defendants.

2               MR. ATKINS: Aldin Atkins from Vinson & Elkins also  
3       on behalf of the Hitachi defendants.

4               MS. VAALA: And Lindsey Vaala from Vinson & Elkins  
5       on behalf of the Hitachi defendants.

6               THE COURT: I'm sorry. It's --

7               MS. VAALA: Lindsey Vaala.

8               THE COURT: I've got it, yes, and you are with  
9       Hitachi too?

10              MS. VAALA: Yes.

11              MR. AUGUST: Gary August for Mitsubishi Electric,  
12       Your Honor.

13              THE COURT: And Jason Gourley?

14              MR. GOURLEY: Jason Gourley, local counsel on  
15       behalf of T. Rad, Your Honor.

16              THE COURT: On behalf of --

17              MR. GOURLEY: T. Rad, Your Honor.

18              THE COURT: Let's see, do we have auto dealer  
19       plaintiffs, that was Mr. Mantese?

20              MR. MANTESE: Yes, Your Honor.

21              THE COURT: I just want to make sure we have  
22       everyone represented. I know somebody has to take a flight  
23       out, who has got to leave first?

24              MR. FINK: The directs with TRW, we are hoping to  
25       go first because they have multiple flights scheduled.

1 THE COURT: Anybody else have multiple flights? I  
2 don't want to give preference especially since you are the  
3 last ones to file. I didn't miss that. All right. Okay.

4 Let's take then the direct-purchaser plaintiffs and  
5 the TRW defendants.

6 MR. KOHN: Thank you, Your Honor. Joseph Kohn for  
7 direct purchasers.

8 Thank you for hearing us today, and thank you for  
9 hearing us first. I will try to move through this  
10 presentation promptly. This process of preliminary approval  
11 for class action settlement is not novel to the Court at this  
12 juncture. I don't want to repeat the law that is set forth  
13 in our memorandum but just a few highlights.

14 With respect to where the direct purchasers are  
15 with the TRW settlement and this particular case, the  
16 occupant safety system piece of this larger MDL litigation,  
17 we believe we are at another significant mile marker in the  
18 road. With this settlement this is the first time that we  
19 are proposing that a claim form be included with the notice  
20 to the class members, and are proposing that in connection  
21 with the final approval hearing that the Court approve a plan  
22 of distribution of the settlement funds that have been  
23 received from TRW and from the prior settlement with AutoLiv  
24 and that there be a distribution to the class members. That  
25 is a mile marker.

1 THE COURT: So you are asking for a final hearing  
2 with all of the bells and whistles beforehand?

3 MR. KOHN: Correct, that we would propose be in  
4 July, and I can go through the dates.

5 In connection with that process, we have also  
6 prepared a notice that would advise the class members that  
7 counsel would file a petition for an award of attorney fees  
8 and litigation expenses relative to these two settlements in  
9 this case. The class members would have the opportunity to  
10 comment, respond to that, in addition to the opportunity to  
11 comment on the distribution plan and the merits of the  
12 settlement.

13 Your Honor, this case, occupant safety, the first  
14 complaints were filed in July of 2013, so a little less than  
15 two years ago, the motions to dismiss were denied August  
16 2014, the settlement with AutoLiv received final approval  
17 from the Court in January of this year, January 2015, and the  
18 settlement agreement with TRW was signed on February 25th.

19 The settlement amount is \$8 million in cash plus an  
20 extensive cooperation section that will bring the total funds  
21 received for the direct purchaser class in the occupant  
22 safety systems case to 43.6 million.

23 We would point out just a few factors in support of  
24 the preliminary approval and also with the final approval we  
25 will brief these in more detail. This was the result of

1 arm's-length litigation and fairly extensive litigation, and  
2 I know all of us on our side of the V have great respect and  
3 friendship for Mr. Iwrey and his colleagues but I will say  
4 that these negotiations did reach several moments where one  
5 side or the other was getting ready to walk or there were  
6 impasses and there were some difficult discussions both to  
7 strike the original terms of the deal and then to go over the  
8 finer points of the agreement.

9 We would point out that the settlement amount to  
10 the direct purchasers is larger than the amount paid by TRW  
11 in its guilty plea fine, which was 5.1 million. That this  
12 settlement is the largest of the individual settlements with  
13 the other plaintiff classes.

14 So, again, Your Honor, we have prepared as we have  
15 done in some other hearings -- the proposed agreed-upon  
16 preliminary approval order has a lot of blanks with dates  
17 with reference this could occur 20 days after approval or  
18 50 days after, so I have prepared a summary document that  
19 assuming that Your Honor is prepared to approve the order and  
20 it is entered tomorrow, the 10th of April, to actually put in  
21 the actual dates rather than have those blanks, so we  
22 prepared both a form of the order with those dates plugged in  
23 and a one-page sheet with those proposed dates, and Mr. Iwrey  
24 has reviewed them as well, so --

25 THE COURT: Okay.

1 MR. KOHN: I can hand up copies now to Your Honor  
2 and also submit them electronically or Mr. Fink could if that  
3 would be of some help?

4 THE COURT: Yes, electronic would be fine.

5 THE LAW CLERK: E-File them because they are  
6 orders.

7 THE COURT: Oh, you will have to e-file them to  
8 Kay.

9 THE LAW CLERK: It is not e-filing, it is e-mail.

10 THE COURT: Whatever the electronic equivalent --

11 MR. FINK: Right, there is a protocol we are  
12 supposed to follow that somebody smarter than me understands  
13 in my office, and we can do that.

14 THE COURT: All right.

15 MR. KOHN: So for the Court's convenience we did  
16 try to check these dates to make sure they don't fall on a  
17 Saturday or Sunday.

18 THE COURT: Let's take a look at -- let's start  
19 with -- I know in your proposed order you had specifically  
20 like 30 days after the preliminary approval, et cetera, so  
21 let's see what you have here.

22 MR. KOHN: These dates do mirror those proposed  
23 dates that they simply, you know, make the assumption, if you  
24 will, that we are working off an April 10th date to have a  
25 round number. There is one -- with one exception with the

1 deadline of filing a claim form, we thought we should allow  
2 some longer time than we had originally proposed so we  
3 proposed essentially 120 days from tomorrow but it would be a  
4 little more than three months from the time the notice goes  
5 out. The objections or opt outs are due earlier, but to the  
6 extent that we are gathering the information and going over  
7 their records, submitting a claim, it is typical to have a  
8 longer period of time and be beyond the opt-out date.

9 THE COURT: Okay. Mr. Iwrey, do you agree with  
10 these --

11 MR. IWREY: Your Honor, that's acceptable.

12 THE COURT: So let's look, I guess we need a final  
13 date for the hearing here in court. You have on or after  
14 Tuesday, July 14th. Kay, what do we look like?

15 MR. FINK: That's Bastille Day, of course, Your  
16 Honor, so I don't know if the Court will be open.

17 THE COURT: We better change it then. July 14th,  
18 do you want that in the morning?

19 MR. KOHN: That would be fine, whatever is  
20 convenient for the Court.

21 THE COURT: I don't think it would take long unless  
22 you get somebody who is objecting, but I could set it either  
23 at 1:30 or I could set it at 10:00, your choice?

24 MR. KOHN: I think the 1:30 time does allow some of  
25 us to try to make it in a day trip and not have to stay over,

1 if that's acceptable to the Court?

2 THE COURT: That's fine. July 14th at 1:30.

3 MR. KOHN: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. FINK: Your Honor, so we will -- we will submit  
6 the order putting in that -- including the hearing time and  
7 date that we just talked about and that again presumes that  
8 it is entered either today or tomorrow. If it is entered  
9 after tomorrow then Molly can contact us and we can replace  
10 all the dates if necessary.

11 THE COURT: Is there any reason why we couldn't get  
12 it tomorrow?

13 MR. FINK: Not that I know of.

14 THE COURT: Okay. We should -- just a minute.  
15 Kay, are you here tomorrow?

16 THE LAW CLERK: She's gone.

17 THE COURT: Oh, she's not here.

18 THE LAW CLERK: I can't get the calendar, I tried  
19 to check but I can't get it pulled up.

20 THE COURT: It looks like it is going to be okay.  
21 I'm not here tomorrow but if you are telling me these are the  
22 orders exactly except with these dates I will look at them  
23 electronically and --

24 MR. FINK: We will get the order to the Court by  
25 2:30 today.

1 THE COURT: Oh, today?

2 MR. FINK: Yes, I can easily get it to the Court.

3 THE COURT: Well, then that's not a problem. All  
4 right.

5 MR. FINK: If we change the rules regarding using  
6 cell phones in the courtroom I could have it in ten minutes?

7 THE COURT: You may use your cell phone.

8 MR. FINK: Thank you.

9 THE COURT: Make sure it doesn't ring. Okay.

10 Well, let's go back in terms of this settlement.  
11 Mr. Iwrey, you don't have -- do you agree with the terms of  
12 the settlement? Maybe we should put the rest of the terms --  
13 I think we've got most of them on the record already.

14 MR. KOHN: I think, Your Honor, from plaintiffs'  
15 perspective we touched the highlights, it is the cash payment  
16 and the extensive cooperation set forth in the document.

17 THE COURT: Okay. Mr. Iwrey, anything?

18 MR. IWREY: Yes, Your Honor, I would agree. Let me  
19 correct something that Mr. Kohn said, he said this is the  
20 product of arm's-length litigation, I think he meant  
21 negotiations.

22 MR. KOHN: Yes.

23 MR. IWREY: While the litigation was certainly  
24 arm's-length or even longer.

25 THE COURT: All right. I have reviewed the



1 proposed -- well, I have reviewed the settlement agreement  
2 and I have reviewed the proposed orders obviously without the  
3 dates but I agree with the dates that have been put in here,  
4 and I think we have gone over these rules before but briefly  
5 I will state that I think the Court has to make a  
6 determination that the settlement is fair, reasonable and  
7 adequate. The Court has reviewed this and I find that the  
8 \$8 million cash payment along with the -- this is true for  
9 all of these looking at the expense and the duration of  
10 these -- of this litigation, the complex issues, and the  
11 cooperation agreements which I think are very important are  
12 included in this.

13 So the Court then goes to look at the proposed  
14 settlement class, and as in the other cases which the Court  
15 has reviewed under Rule 23 because as to the classes they  
16 pretty much all follow the same thing, obviously the class  
17 here is for the occupant safety -- yes, the occupant safety  
18 system as a component part.

19 In terms of the class certification, certainly  
20 there is numerosity; there is commonality because anti-price  
21 fixing conspiracy cases by their nature deal with common  
22 legal and factual issues; there's typicality because it is  
23 satisfied here because the individual plaintiffs' injury  
24 arise from the same wrong that is incurred by the whole;  
25 there is adequacy of representation as to the named

1 plaintiffs, they have the same interest as other class  
2 members; and as to counsel, counsel is qualified, experienced  
3 and able to conduct litigation. The Court finds that there  
4 are common questions that predominate and that the class  
5 resolution is the superior method.

6 So I think all of the Court Rules on class are  
7 satisfied in this case, and I do believe that it was a  
8 resolution that was resolved at arm's-length negotiations,  
9 and I think counsel, as the Court has indicated before,  
10 clearly are capable and have exhibited their capabilities  
11 here to come to this resolution, so the Court does, in fact,  
12 approve the -- preliminarily approve the proposed settlement.  
13 I provisionally certify the class as stated for in the  
14 pleadings.

15 Class counsel, I think we need to do that too, and  
16 the Court will appoint class counsel for the settlement  
17 class, the provisional class will be the class counsel. And  
18 the notice the Court approves with the dates inserted in it.

19 Did I forget anything, Counsel, anything else that  
20 we need --

21 MR. KOHN: No, Your Honor.

22 THE COURT: -- Mr. Kohn?

23 Mr. Iwrey?

24 MR. IWREY: No, Your Honor.

25 THE COURT: Thank you. That concludes that.

1           Let's see, then we have Panasonic and Hitachi, who  
2           wants to go --

3           MR. WILLIAMS: Your Honor, Steve Williams for the  
4           end payors. I will go first.

5           The settlements for Hitachi and Panasonic are  
6           different but the standards are similar.

7           THE COURT: Okay. Wait a minute, are we going to  
8           do them together?

9           MR. WILLIAMS: I was going to ask you if you have a  
10          preference because I could set forth the material terms of  
11          the two settlements and then at one time address the  
12          standards for approval?

13          THE COURT: I think that's reasonable. Let me just  
14          find those two. You are for end payors with Hitachi. Okay.  
15          You may proceed.

16          MR. WILLIAMS: The first settlement that was filed  
17          with the Court was the Panasonic settlement, this is a  
18          settlement between the end payors and Panasonic. These  
19          proposed settlements in conjunction with the auto dealers'  
20          settlements I believe resolve all claims in this Court  
21          against Panasonic.

22          Panasonic is a defendant in three cases; switches,  
23          steering angle sensors and HID ballasts. Panasonic has  
24          agreed to pay a total for the end-payor cases of \$17,100,000  
25          to resolve those three cases. In our papers we provided the

1 specific allocations in those cases of what those dollars  
2 will be, I can recite that for the Court or, as I mentioned,  
3 it is in the papers as well.

4 THE COURT: Okay.

5 MR. WILLIAMS: In addition to the financial  
6 consideration, Panasonic has agreed to provide what is in our  
7 view very meaningful and important cooperation, cooperation  
8 that we believe goes beyond what we otherwise would have  
9 available to us, and this comment will apply equally to  
10 Hitachi. Given that these cases as we have alleged and as is  
11 we think confirmed in the plea agreements that have been  
12 reached involve conspiracies, involve destruction of  
13 evidence, involve secret meetings and code words, we think  
14 this is a case where this type of cooperation is even more  
15 meaningful and even more important than it might be in other  
16 cases. And I note as well finally for Panasonic as with  
17 Hitachi that they are the first defendant to settle in the  
18 cases in which they have settled.

19 For Hitachi, similarly Hitachi has agreed to a  
20 settlement with the end payors and in conjunction with the  
21 auto dealers settlement that I believe resolves all  
22 outstanding or all pending claims in this Court that are  
23 brought against Hitachi.

24 As with Panasonic, Hitachi has agreed to pay one  
25 lump sum to resolve all cases against it, and that sum is

1 divided amongst one, two, three, four, five --

2 THE COURT: Nine parts.

3 MR. WILLIAMS: -- nine cases that they are in.

4 The Court may have noted that we have proposed --  
5 or that we intend to file a motion to consolidate two of  
6 those cases to make them one, it has not happened yet, if we  
7 do we will modify the orders to reflect if that's approved by  
8 the Court, that air flow meters and electronic throttle  
9 bodies have become a single case as we are alleging it rather  
10 than two, but other than that the settlement is to resolve  
11 all of those cases. And, again, the total settlement is I  
12 believe \$46,700,000, and I'm just finding that number, I  
13 apologize. I had written down the separate numbers for each  
14 of the settlements which are also at page 10 of our motion,  
15 and I could go through each of those or if the Court wants  
16 that total number?

17 THE COURT: I have the total number as  
18 \$46,740,000 --

19 MR. WILLIAMS: Correct.

20 THE COURT: -- is that right?

21 MR. WILLIAMS: Yes.

22 THE COURT: You have those relegated to each of the  
23 nine parts that you have right now --

24 MR. WILLIAMS: We do.

25 THE COURT: -- your papers, in the agreement, so

1 the Court has reviewed that so unless there is an objection I  
2 don't think you need to separately set forth that on the  
3 record.

4 MR. WILLIAMS: I do not or I do? I apologize.

5 THE COURT: You do not.

6 MR. WILLIAMS: Thank you. And as with Panasonic,  
7 Hitachi has also agreed to provide substantial and meaningful  
8 cooperation, it is the first settling defendants in these  
9 cases. And for the same reasons that I mentioned in relation  
10 to Panasonic, in these cases we think the value of this  
11 cooperation is particularly important and particularly  
12 meaningful and will be particularly beneficial to the class.

13 In terms of the settlements themselves, both for  
14 Panasonic and for Hitachi, they were the result of protracted  
15 arm's-length negotiation between experienced counsel on both  
16 the Panasonic side and the Hitachi side, extremely  
17 experienced, extremely capable counsel who vigorously  
18 defended the interest of their clients. Negotiations in the  
19 case of Panasonic went over a period of at least six months,  
20 and with Hitachi I believe negotiations took place over a  
21 period of a year and a half. In the case of Hitachi, it also  
22 involved the assistance of Ken Feinberg, a very prominent,  
23 recognized mediator, multiple two-day sessions with  
24 Mr. Feinberg and with the parties were held before we reached  
25 the settlement terms, at all times the parties engaged in

1 arm's-length negotiations, and as a result of that we think  
2 that certainly suggests that the settlement should be  
3 preliminarily approved.

4 Briefly, because it is in the papers and the Court  
5 has recited it, we know when there is a public interest in  
6 resolution of class actions and anti-trust actions, we think  
7 that in these cases for Panasonic and Hitachi there is no  
8 reason to doubt the fairness of the settlements, there is no  
9 obvious deficiencies in the settlements, the results in light  
10 of the risk of litigation both in this Court with the  
11 defenses made by defendants and the risk over time of  
12 potential changes in the law, the result is good in light of  
13 those risks.

14 All of the requirements of both 23(a) and 23(b) (3)  
15 are met in these proposed settlements; there's numerosity,  
16 the legal and factual questions are common, the claims of the  
17 class members are typical of the claims of the class, the  
18 class reps and counsel will adequately protect the interest  
19 of the class members. And as to 23(b) (3) common questions  
20 certainly predominate in this horizontal price-fixing  
21 conspiracy, and we believe class resolution is the superior  
22 method to resolve these claims rather than individual  
23 litigation.

24 We have not, unlike the settlement just presented  
25 to the Court, put forward a notice or a plan of distribution

1 but it is our intention to put those things before the Court  
2 very soon. We have been working with our claims  
3 administrator and with our notice provider to put that plan  
4 together, and it is our hope that within the next 30 days, if  
5 certainly not then by the May 6th hearing, we have an  
6 opportunity to present that to the Court for approval so that  
7 we can start to disseminate notice to our class members of  
8 the settlements and to bring the settlements we have reached  
9 to date and other settlements we may reach to finality.

10 That is my presentation on Hitachi and Panasonic.  
11 I had a comment on T. Rad but I could wait to see if there  
12 are any questions first.

13 THE COURT: I'm sorry, but I don't know about  
14 T. Rad.

15 MR. WILLIAMS: T. Rad at the last hearing we had,  
16 which I think was January 28th, we had just reached agreement  
17 with them on essential terms. We had hoped to present it to  
18 the Court today. We are still finalizing the agreement, and  
19 I know counsel for T. Rad is here.

20 THE COURT: Yes.

21 MR. WILLIAMS: My understanding is we expect within  
22 a week to have those papers to the Court, and the parties  
23 would request that the Court consider approving that without  
24 oral argument, and if the Court certainly directs us we will  
25 intend to be here to answer any questions, but if the papers



1 are sufficient for the purpose of preliminary approval then  
2 we would be able to fold that into the notice program we are  
3 putting together at this time and somewhat accelerate that to  
4 catch up with the prior settlements.

5 THE COURT: You scared me because I thought I  
6 missed reading something, there wasn't anything here for  
7 T. Rad?

8 MR. WILLIAMS: No, there are no papers before the  
9 Court today but --

10 THE COURT: Thank you.

11 MR. WILLIAMS: -- we had suggested we might make it  
12 and we didn't make it.

13 THE COURT: We try hard to keep up with everything  
14 here but -- and counsel for T. Rad, is that a correct  
15 statement, do you agree with what was said here?

16 MR. GOURLEY: Yes, that's accurate.

17 THE COURT: And you would agree to have it approved  
18 in writing?

19 MR. GOURLEY: Yes, we would.

20 THE COURT: Okay. I am assuming it is going to be  
21 just like all of these other ones so as a practical matter  
22 the Court basically, if it is the same, would simply accept  
23 your settlement agreement and make the findings that I do on  
24 the record here. That's all. Okay.

25 MR. WILLIAMS: Thank you.

1 THE COURT: All right. So do you think that would  
2 be done by the May 6th meeting?

3 MR. WILLIAMS: The T. Rad or the notice papers?

4 THE COURT: Notice papers.

5 MR. WILLIAMS: I believe it will, I expect it will,  
6 I would hope it would be done even before then although I  
7 recognize that's only now a little less than a month away,  
8 but it is our hope to have it to the Court before that  
9 hearing.

10 THE COURT: Because if there is anything we need to  
11 deal with that we can deal with then make sure you make a  
12 note of putting that on the agenda.

13 MR. WILLIAMS: We will.

14 THE COURT: All right. Defendant for Panasonic and  
15 Hitachi, any comment?

16 MR. MANTESE: Your Honor, did you want to hear from  
17 the auto dealers first or wait until --

18 THE COURT: No, let's just take the end payors  
19 first so we can --

20 MS. SWANSON: I have nothing to add, Your Honor,  
21 but I would defer to the Winston & Strawn lawyers on the  
22 phone.

23 THE COURT: That you would what?

24 MS. SWANSON: Defer to the lawyers from Winston on  
25 the phone -- on your conference line.

1 THE COURT: Thank you. Ms. Cole?

2 MS. COLE: Yes, Your Honor, I have nothing to add.

3 THE COURT: Okay. Mr. Duke?

4 MR. DUKE: The same, nothing to add.

5 THE COURT: Okay. Very good. So we have the  
6 end payors, and before I rule on this and go through it let's  
7 take the auto dealers.

8 MR. SEEBALD: Your Honor, just before we go to the  
9 auto dealers, this is Craig Seebald for the Hitachi  
10 defendants. Just for the record, we have nothing further to  
11 add too.

12 THE COURT: Oh, I'm sorry, Counsel. Thank you.  
13 Thank you very much. Sorry.

14 MR. MANTESE: Good afternoon, Your Honor.  
15 Gerard Mantese for the auto dealers.

16 We also are seeking preliminary approvals for the  
17 settlements we have achieved with Hitachi and with Panasonic.  
18 The settlement with Hitachi is \$14,760,000. The allocations  
19 are in our motion as well. The settlement with Panasonic is  
20 \$5,400,000.

21 Your Honor, we would agree with the analysis of  
22 Mr. Williams as to the factors in favor of preliminary  
23 approval. The settlements were arrived at over a lengthy  
24 period of time through vigorous representation, they are  
25 fair, reasonable and adequate, and all of the requirements of

1 23(a) and (b)(3) are met in terms of the class elements.

2 Unless the Court has any questions we are seeking preliminary  
3 approval as well for our settlements.

4 THE COURT: All right. Let's start with Hitachi.

5 MR. SEEBALD: We have nothing further to add to  
6 that either. Thank you.

7 THE COURT: Thank you. Panasonic, Ms. Cole?

8 MS. COLE: We are fully in support of the  
9 agreement.

10 THE COURT: And Mr. Duke?

11 MR. DUKE: I have nothing else to add.

12 THE COURT: Anybody have anything else to add?

13 MS. SWANSON: Nothing, Your Honor.

14 THE COURT: Okay. Thank you. Well, then we have  
15 here -- we have the end-payors agreement first with Hitachi  
16 and that includes nine component parts as I read them?

17 MR. WILLIAMS: Yes.

18 THE COURT: There may be eight if they are  
19 combined, though, correct?

20 MR. WILLIAMS: Yes.

21 THE COURT: But right now they are nine and that's  
22 a \$46,740,000 settlement. And with -- oh, I put this down  
23 twice. Okay. With the auto dealers with Hitachi that's also  
24 a nine-component part and that's 195 -- excuse me, I've got  
25 that wrong, I'm reading the fines instead of the settlement

1 amount. For Hitachi with the end payors it is \$46,740,000  
2 and Hitachi with the auto dealers it is \$14,760,000, and I  
3 think in both of those they are designated to the various  
4 parts, there being nine parts at this point.

5 As to the auto dealers against Panasonic, it is a  
6 \$5.4 million settlement, I have three parts for that;  
7 switches, steering angle sensors and HID ballasts. And as to  
8 the end payors with Panasonic it is a \$17,100,000 settlement.  
9 And, again, as I recall these are designated to each of the  
10 parts, the amount is divided over each of the parts not  
11 necessarily equally but specifically designated.

12 As to all of those, you know, are the settlements  
13 fair, reasonable and adequate? The Court before I even get  
14 to that gets to the settlement class and the settlement  
15 classes have been defined -- it is interesting because in  
16 each of these they are defined in the different parts, in the  
17 one settlement, of course, there are nine classes because of  
18 the nine parts and the other there are three classes for both  
19 the auto dealers and the end-payor purchasers. The Court  
20 just read the definition of those classes, and I find that  
21 they are appropriately designated. And certainly the amounts  
22 here appear to be sufficient as they are agreed upon amongst  
23 the parties with learned counsel at arm's-length  
24 negotiations.

25 The Court finds as specifically stated in this case

1 that cooperation is extremely important here, and that the  
2 parties have agreed to cooperate and there are specific  
3 elements of that cooperation laid out in the settlement  
4 agreement.

5 The Rule 23(e), of course, requires the Court's  
6 approval of the proposed class settlement, and the Court  
7 notes that federal policy favors settlement and, again, the  
8 Court repeats that with counsel and arm's-length  
9 negotiations, the lack of discovery, the difficulty of  
10 proceeding with this case, the fact that these parties also  
11 in some cases negotiated with Kenneth Feinberg, who the Court  
12 knows as a prominent mediator, tells me that there is every  
13 reason to believe that this is a fair, reasonable, adequate  
14 settlement.

15 In terms of provisionally certifying the class, the  
16 Court finds as it has in the other resolutions that it would  
17 be impractical to do this individually, that this class  
18 resolution where there are so many entities and persons  
19 involved is certainly a preferred method of litigation.  
20 There is commonality, typicality and there is adequacy of  
21 representation. Again, I don't need to I think go into that,  
22 but the Court finds that the attorneys are learned and  
23 educated in these type of matters and the class would be  
24 adequately represented with the counsel, and as to the  
25 individual plaintiffs they have the same interest as all of

1 the other class members.

2 Common questions certainly predominate in this  
3 litigation, and the Court finds that the class resolution is  
4 the superior method and all the elements as required by the  
5 rules are included.

6 In terms of the notice to the class, I know one of  
7 the things that is asked for is that they defer notice until  
8 a later date, and the Court as it has in some of the other  
9 resolutions will defer notice, I hope it can be done as soon  
10 as possible because it would be really nice to move along  
11 with these settlements as final settlements. The Court will  
12 stay the proceedings in accordance with the terms of the  
13 settlement agreement against the named defendants. The Court  
14 does appoint the counsel as represented as class counsel for  
15 the settlement class, and I think I have already indicated  
16 that I approve the settlement and the settlement classes. Is  
17 there anything else?

18 MR. WILLIAMS: No, Your Honor. Thank you.

19 THE COURT: Thank you. Okay. All right. Before I  
20 go on to one other matter, is there anything else on the  
21 settlements that needs to be resolved today?

22 MR. IWREY: Your Honor, this is Howard Iwrey for  
23 TRW.

24 I assume -- you didn't mention this in your initial  
25 ruling but I assume there is a stay in the proceedings with

1 respect to TRW?

2 THE COURT: Oh, thank you. Yes, there is a stay as  
3 to TRW. Thank you. I did your stay as to the other  
4 defendants.

5 MR. WILLIAMS: I was going to just answer your  
6 question, nothing further.

7 THE COURT: Nothing further. Okay. Anything else?  
8 Mr. Iwrey, anything else?

9 Okay. I understand, Mr. Schnatz, that you want to  
10 update the Court on the website?

11 MR. SCHNATZ: Actually all of us that are local --  
12 actually I think we nominated Mr. Iwrey to quickly inform the  
13 Court.

14 MR. IWREY: Thank you.

15 THE COURT: I consider him our computer guru anyway  
16 so --

17 MR. IWREY: Hopefully this will work. Your Honor  
18 had asked us at the status conference -- not the January one,  
19 but the November one, to work out some website protocols for  
20 the cases of interest tab on your page. We have among this  
21 group here preliminarily discussed and I think agreed on a  
22 format for something that the public could access by clicking  
23 on the cases of interest tab, then going -- and I believe you  
24 have a couple -- or the court has a couple of existing cases,  
25 I think the Dow litigation and one other. We would put a tab



1 for the auto parts litigation, if that's clicked on then it  
2 would click to information on specific parts -- we  
3 contemplate three categories, one for dates of upcoming  
4 hearings and status conferences, one for information on  
5 specific parts cases, so listing the 29 or so cases, and one  
6 for notices of settlement separated by the various parts. So  
7 if you click on information on specific cases, then you could  
8 choose what part, and then you would within each part look at  
9 the direct purchaser, the automobile dealer, the end-payor  
10 cases, the OEM cases and the state AG cases and the  
11 public-entity cases, the various subclasses.

12 THE COURT: Can I go back and ask only because I  
13 don't know if I jumped the gun on this, when we were  
14 developing the new court website so I thought that would be  
15 our case but someone said to me well, no, not your case  
16 because it doesn't -- it is not high notoriety but I think  
17 when I look at -- so I'm not trying to -- I'm sorry. I said  
18 what do you mean?

19 MR. FINK: That's very hurtful, Your Honor.

20 THE COURT: I'm sorry.

21 MR. FINK: You didn't say it but whoever said it I  
22 want to meet.

23 THE COURT: Yeah. But the more I read there is  
24 always an article in multiple papers every time something  
25 happens on the case, so I feel a little bereft if we don't

1 have something on our website for it. I don't know. What do  
2 you -- I know I made you do this and so therefore you are  
3 probably -- but I want your honest answers as to what you  
4 think.

5 MR. IWREY: Well, from the defendants' perspective  
6 I think we are rather neutral on that.

7 MR. FINK: Speaking on behalf of the  
8 direct-purchaser plaintiffs, we are not looking for more  
9 notoriety, but the component parts of this matter -- I don't  
10 mean the car components, but the component parts of what led  
11 to these cases is getting a lot of attention in the media, if  
12 you read the business section every time there is another  
13 guilty plea there is a reasonably large article about it, and  
14 we get a lot of questions, so from our perspective we think  
15 this is a very high-profile case. I'm a little surprised --  
16 it is not, you know -- it doesn't have the salacious details  
17 that I know people like to see in a high-profile case but  
18 it's certainly one we get a lot of questions about.

19 THE COURT: The Dow case is on there?

20 MR. IWREY: The Dow case and maybe Judge Freidman's  
21 case.

22 MR. SCHNATZ: I think so, that sounds right.

23 THE COURT: Well, you know, I was just thinking  
24 that if people wanted to know about it if they hear about it  
25 they are certainly not going to know -- I'm talking about

1 non-lawyer, well, maybe even lawyers, they are not going to  
2 know how to get into the 2311 and look at all of what is  
3 there.

4 MR. IWREY: This contemplates a shortcut that would  
5 get to eventually the complaints, answers, counterclaims, as  
6 well as Your Honor's opinion and another shortcut to the  
7 settlements which would probably link to the settlement  
8 administrator websites.

9 MR. SCHNATZ: Your Honor, Adam Schnatz here. I  
10 think we are still working out the specific documents that we  
11 are going to have linked to this website but obviously one of  
12 the most crucial parts of this website is information  
13 regarding the settlements, I mean, that's going to be the  
14 reason that most people come to this website, read about the  
15 case, find out who the parties are, what's been going on, so  
16 obviously that's the most critical part. There's still a few  
17 issues that the end payors have regarding the contents of  
18 nonsettlement matters in the website which I'm confident we  
19 will work out very soon, but in terms of how this website is  
20 structurally together, I mean, I think we got it pretty  
21 good -- a pretty good formula down. We would like to speak  
22 with the Court's website administrator --

23 THE COURT: I was just going to say.

24 MR. SCHNATZ: -- to see how much this is feasible.  
25 This plan and this format is wonderful and great

1 but if it can't be done, you know, by the administrator it  
2 can't be done.

3 THE COURT: I will tell you what, I will talk to  
4 the head of IT and explain to him what we propose -- what you  
5 propose as to basically an outline and the different subparts  
6 and ask him to assign somebody to talk with you because I  
7 certainly don't have any idea how this is done but why don't  
8 I send -- I'll tell you, Mr. Iwrey, I know my clerk has  
9 spoken to you, so I will have Molly contact you with the name  
10 of the person to deal with and then you could get these other  
11 gentlemen involved.

12 MR. IWREY: That would be great, probably  
13 accomplish like what we did with the filing protocol, sit  
14 around a table and hash it out.

15 THE COURT: Right, I think that would be a good  
16 idea. Well, thank you for working on that.

17 MR. IWREY: Thank you.

18 THE COURT: I didn't mean to insult you, I just  
19 wanted -- actually I was insulted, I thought what do you mean  
20 but, no, I think that there is good reasons particularly with  
21 these settlements that people have to have access somehow  
22 through the court.

23 MR. SCHNATZ: Especially now with the notice for  
24 the dealerships and the end payors set to go out soon, I'm  
25 sure there is going to be a lot more inquiries coming in, so

1 the quicker we can get this up the better obviously.

2 MR. FINK: And one in particular -- one issue in  
3 particular that we have already experienced with the  
4 suppliers, once we have one settlement, as soon as that  
5 settlement notice went out we started getting questions about  
6 all the other parts and what's going on, it is just so much  
7 easier to say go to the court website, you know, and more  
8 comprehensive information.

9 THE COURT: And while we are talking about parts, I  
10 have one other question which we will, of course, address at  
11 the May meeting, but I'm always curious as to whether there's  
12 any other parts anybody knows of. We had talked about it at  
13 our last meeting that there were several coming up but I  
14 haven't heard a thing?

15 MR. IWREY: I will back away from this.

16 MR. FINK: There are some. I know there was  
17 recently a plea by Bosch which I'm not certain but I think it  
18 added a couple parts that we haven't previously seen.

19 MR. SCHNATZ: Spark plugs and a couple others.

20 THE COURT: So there still are more that will be  
21 coming is what you are telling me?

22 MR. FINK: Yes.

23 MR. SCHNATZ: Yes, Your Honor.

24 THE COURT: I feel good though because I think we  
25 are getting finally a grasp on the whole case because we know

1 there's an end in sight.

2 MR. SCHNATZ: True, Your Honor.

3 THE COURT: I'm not looking forward to any other  
4 plaintiffs popping up.

5 MR. FINK: Then I want to apologize in advance to  
6 the Court, well, I guess their aren't other plaintiffs but we  
7 are going to be filing some direct cases but all in the same  
8 issues.

9 THE COURT: We do have -- we did get a letter so I  
10 ask you to look at -- Molly, are those motions -- handwriting  
11 motion, is that what they were?

12 THE LAW CLERK: Pro se motions to intervene, they  
13 were filed in the 2311.

14 THE COURT: Yes.

15 MR. IWREY: I believe that gentleman has intervened  
16 in several hundred cases.

17 THE COURT: Well, I'm going to tell you what I am  
18 going to do is require the presence of the interveners for a  
19 motion hearing on May 6th so everybody will be available and  
20 I see them in person.

21 MR. FINK: Good.

22 MR. IWREY: He may be incarcerated.

23 MR. WILLIAMS: It might require the assistance of  
24 the marshal service.

25 THE COURT: That's what I was afraid of.

1 MR. WILLIAMS: Yes.

2 THE COURT: We have to take care of it, it is filed  
3 as a motion so I need to do something.

4 MR. WILLIAMS: I believe it was filed in our case,  
5 the end-payor case, and it is our intention to file a  
6 response to that.

7 THE COURT: Good. Just know that we are going to  
8 put it on the agenda for May 6th and presence will be  
9 required.

10 MR. FINK: Good idea.

11 THE COURT: I hope he doesn't interrupt our meeting  
12 but we will see.

13 MR. FINK: His presence is required and if he  
14 appears the rest of us will not.

15 THE COURT: Okay. Thank you very much. I  
16 appreciate it.

17 THE LAW CLERK: All rise. Court is in recess.

18 (Proceedings concluded at 2:20 p.m.)

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## 1 CERTIFICATION

2  
3 I, Robert L. Smith, Official Court Reporter of  
4 the United States District Court, Eastern District of  
5 Michigan, appointed pursuant to the provisions of Title 28,  
6 United States Code, Section 753, do hereby certify that the  
7 foregoing pages comprise a full, true and correct transcript  
8 taken in the matter of IN RE: AUTOMOTIVE PARTS  
9 ANTITRUST LITIGATION, Case No. 12-md-2311, on Thursday,  
10 April 9, 2015.

11  
12  
13 s/Robert L. Smith

14 Robert L. Smith, RPR, CSR 5098  
15 Federal Official Court Reporter  
16 United States District Court  
17 Eastern District of Michigan

18 Date: 04/23/2015

19 Detroit, Michigan  
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